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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Yolo)

In re B.N., a Person Coming Under the Juvenile Court
Law.

C087646

YOLO COUNTY HEALTH AND HUMAN
SERVICES AGENCY,

(Super. Ct. No. JVSQ-18-256)

Plaintiff and Respondent,

v.

M.F.,

Defendant and Respondent;

B.N.,

Appellant.

Minor B.N. appeals from the juvenile court's dispositional judgment returning her to the custody of father M.F. with family maintenance services. (Welf. & Inst. Code,

§§ 300, 361, 395.)¹ She contends the evidence does not support the juvenile court's finding that removal was not necessary for her physical health or safety, or to protect her physical or emotional well-being. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On May 14, 2018, the Yolo County Health and Human Services Agency (the Agency) filed a section 300 petition on behalf of the then six-year-old minor, alleging the minor was at risk due to father's excessive use of force and physical discipline (§ 300, subd. (a)), and his inability to appropriately manage the minor's behavior. (§ 300, subd. (b).)²

The minor had reported that on May 9, 2018, father became angry with her for not doing her homework correctly and attempted to pull her hair, but instead accidentally pushed her face down against the table, resulting in a bruise on her chin and a cut on her gum. Minor stated this was the first time her father "hit" her, although he had spanked her in the past.

Father stated that the incident on May 9, 2018, was an "accident" and that the minor "did it to herself." He had been helping her with her homework but she was not listening to him and they began to argue. "She was sitting at the table and I was standing over her; she was screaming at me; I was pissed; I yelled because I was getting upset because she was yelling and throwing things and having a tantrum, so I got angry and started yelling back at her because she was not listening to me. She had my blood boiling. I finally got her to sit down but she started yelling and kicking and throwing things. I flinched at her and she moved her head and she hit her mouth on the table; and

¹ Further undesignated statutory references are to the Welfare and Institutions Code.

² Father has sole custody of the minor.

that was it. She cried for 20 minutes, and after she was done crying she came back and it was done.”

Father indicated that he was struggling with parenting the minor and that her behaviors had escalated out of his control. Father stated that he does not use physical discipline and that yelling was his most common form of discipline—although nothing helped. The minor was in counseling at school but it was not helping. Her most common behaviors include not listening, lying, being disrespectful, and throwing tantrums.

Father was noticeably irritated during his interview with the social worker before detention. He told the social worker that the minor’s kindergarten teacher did not like the minor and he got regular reports about her behavior from school. The minor’s teacher had recommended the minor be put on medication for attention deficit disorder, but father did not agree with that because he believes in natural healing over modern medicine. Father noted that the minor’s mother was bipolar. It made him sad that most of his family did not like the minor because of her issues, but stated that he loves her unconditionally. He added that “she has mental issues for sure; she’s a devil child sometimes.”

Father explained his frustration to the social worker, repeating that he loves the minor unconditionally and kept thinking the minor’s behaviors were a phase and she would “grow up and be better, but I don’t know anymore. I have her all the time. She drives me crazy half the time.” He is raising the minor alone so the farthest he had gone to help the minor with her mental health and behaviors was counseling. He stated, “I cannot keep saying that she has been through a lot because [there] are a lot of kids that have been through a lot and they don’t act like that. I cannot keep making excuses for her. There is a bad apple in every tree and she might be that bad apple. Who knows?”

The minor’s school counselor stated she had been working with the minor on social skills and self-regulation, as the minor struggles in the classroom with impulsivity, moving around, not listening, and not doing her classwork. She reported the minor

tended to get angry quickly, although her anger is within herself and she is not aggressive. She was well liked at the school and usually pretty compliant for the counselor. The counselor had not known the minor to tell lies and she would not characterize the minor's school behavior as "out of control," but the minor did have traits of attention deficit hyperactivity disorder. Although the minor was not an "easy" student, the counselor stated any negative things father said about the minor were "simply his perception."

According to the social worker, at some point before detention,³ father also had disclosed to his CalWORKs (California Work Opportunity and Responsibility to Kids) case manager that his girlfriend (and mother of the minor's half sibling) "hates" the minor and did not want to live with him because of the minor's uncontrollable behavior.⁴ The case manager had provided referrals for father and the minor for mental health services, counseling, and parenting education. Father had declined the counseling services for the minor, stating "she would lie and make stuff up to get him in trouble," and attended only one counseling session for himself.

The minor was detained and placed in foster care. The parties stipulated to jurisdiction under section 300, subdivision (b) (failure to protect) based on father's inability to control the minor's behaviors and father's unwillingness to engage in services, and the allegation under section 300, subdivision (a) (serious physical harm), was stricken.

³ The record provides no timeframe for this information, although we can discern from the record that it was likely after February 2016, which is when the girlfriend indicates she and father met.

⁴ Father's girlfriend testified she did not dislike the minor nor ever state that she disliked her.

The disposition hearing took place on June 28, 2018. Father was employed and had appropriate housing. He maintained that he did not smash the minor's head into the table and did not believe he needed services, but he agreed to take any steps necessary, including participating in services, to address the problems which led to judicial intervention. He identified parenting support and mental health treatment for the minor as services that might be beneficial for his family. He was committed to reunifying the minor and his interactions with the minor during visits had been positive. Nonetheless, the Agency maintained that father lacked parenting and coping skills to safely manage frustration and anger, and recommended the minor be removed from father's custody with family maintenance services.

Father testified at the hearing. Regarding the incident giving rise to the petition, father stated that he had been helping the minor with her first-grade math and the minor got frustrated because she thought he was doing the problem wrong. She threw her pencil and her body out of the way. He "went to go grab her, and she proceeded to lunge forward. At that point, she hit her mouth on the table." Father admitted that he attempted to pull her hair but maintained he did not smash her face into the table. Father recognized that he "[a]bsolutely" did not handle the situation very well and admitted that he should have been more patient with her and calmer about the situation. The social worker had not referred father for anger management until the week before the hearing. Father immediately enrolled and had already attended one class.

Father had participated in a voluntary parenting program prior to this case in connection with a family law custody matter, in which he had learned different types of discipline such as time-outs, getting down at the minor's level, speaking in a calm voice, rewards, and removing things that are important to the minor. Father still employed some of those methods. He was willing to participate in another parenting class, as well as any kind of specialized parenting class that might help him deal with the minor's challenging behaviors. He would do whatever it took to get his daughter back. He had not been

aware that the Agency was recommending parenting education until the day before the hearing.⁵

The juvenile court found that the Agency had not made reasonable efforts to avoid removal of the minor. It had not, for example, facilitated visitation or discussed parenting education or individual counseling with father, and it had delayed referral to an anger management program. The juvenile court also found father to be genuine and believed his version of the precipitating incident was likely more accurate than the minor's version, and found it to be a serious but isolated incident. It saw father as taking responsibility, eager to have his daughter back in his home, and willing to cooperate with the Agency on a family maintenance safety plan. The juvenile court further found that while father had been unable to manage the minor, he had made some effort to get help by obtaining counseling for the minor in school. Accordingly, the juvenile court found that the minor's safety and well-being could be adequately protected by instituting a safety plan with "strict guidelines" and "strict rules," including unannounced visits.

The juvenile court ordered that the minor should be immediately enrolled in counseling. Recognizing that father has an anger management problem, he was to be referred to counseling (to which father agreed). The juvenile court also found that father's parenting skill and style as a "strict disciplinarian" was an "absolute mismatch" for the minor's temperament. The Agency had not even advised father it was recommending parenting education until the day before the hearing. The juvenile court struck parenting education from the services plan and replaced it with individual

⁵ The Agency had made a referral for parenting education before the detention hearing. Apparently, after the stipulated resolution of jurisdiction, father had been under the impression that the whole matter had been dismissed and he did not need to participate in services. The social worker clarified the matter to him shortly before the disposition hearing and father stated he was open to participating, so the social worker made a referral for anger management. There is no indication the social worker discussed parenting education with father at that time.

counseling and reflective parenting to help father address the needs of this particular minor.⁶

The minor was declared a dependent child of the court and placed with father with the foregoing family maintenance services.

DISCUSSION

To remove a child from a parent’s physical custody, the juvenile court must find clear and convincing evidence that “[t]here is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor’s physical health can be protected without removing the minor from the minor’s parent’s . . . physical custody.” (§ 361, subd. (c)(1).)

We review the juvenile court’s determination regarding removal for substantial evidence. (*In re Basilio T.* (1992) 4 Cal.App.4th 155, 170.) Typically, when reviewing for substantial evidence, this court reviews the record to determine whether there is any substantial evidence to support the juvenile court’s conclusions, resolving all conflicts and making all reasonable inferences from the evidence in favor of upholding the juvenile court’s orders, if possible. (*In re Christopher R.* (2014) 225 Cal.App.4th 1210, 1216.) However, as minor concedes, where, as here, “ ‘the issue on appeal turns on a failure of proof at trial, the question for a reviewing court becomes whether the evidence compels a finding in favor of the appellant as a matter of law.’ ” (*In re Luis H.* (2017) 14 Cal.App.5th 1223, 1227, quoting *In re I.W.* (2009) 180 Cal.App.4th 1517, 1528; see also *Roesch v. De Mota* (1944) 24 Cal.2d 563, 570-571.) In such a case, the appellant must demonstrate the evidence in the juvenile court “ ‘was (1) “uncontradicted and unimpeached” and (2) “of such a character and weight as to leave no room for a judicial

⁶ Reflective parenting was described as a program wherein father would be videotaped in the home and provided feedback about how to deal with the minor.

determination that it was insufficient to support a finding.” ’ ’ (In re Luis H., at p. 1227; see also *In re Aurora P.* (2015) 241 Cal.App.4th 1142, 1162-1163 [applying same standard to a minor’s appeal of juvenile court’s order terminating jurisdiction under § 364].)

Applying these principles here, we conclude that the evidence supports the juvenile court’s finding that, while father’s home is not “a perfect home” with all the past conflict and the manner in which father handled it, the circumstances were not so urgent so as to render the home “unsafe,” necessitating removal.

With respect to the risk of physical harm to the minor if she remained in father’s custody, the juvenile court found there was no history of domestic violence. Father had issues with anger management but there were no substantiated incidents that father had ever injured anyone. Father did tend to yell at the minor and others, and had struck the wall in anger (two years earlier) during a dispute with his mother, but it was undisputed by the minor that father had never struck or hit the minor. And although the minor and father had a somewhat different version of the event resulting in the minor’s face hitting the table, neither version claimed father had acted intentionally. Furthermore, father agreed that his actions constituted excessive discipline. Under these circumstances, the juvenile court could reasonably determine that father’s enrollment in an anger management program, and agreement to participate in individual counseling to gain insight into how to manage the minor’s behavior, were sufficient means to protect the minor from physical harm during the family maintenance services.

With respect to the risk of emotional harm to the minor if she remained in father’s custody, minor emphasizes that father had declined mental health services for the minor prior to disposition. Father had, however, enrolled her into counseling at school before the petition was filed. And while he may not have brought her in to be evaluated for

appropriate medication, the minor was referred to more intensive counseling⁷ and mental health services at the time of disposition and the Agency was available to monitor that the minor continues to be able to participate in those services. Thus, the immediate risk to the minor caused by not being in such services has been ameliorated, even assuming father is still not entirely in agreement with her receiving medication in connection with those services. We note, however, that father had suggested that mental health services for the minor would be beneficial for the family.

Regarding the emotional harm the minor may suffer from father's negative statements about her to others, it is purely speculative that the minor is even aware of such statements. In any event, the juvenile court found father to be "genuine" in his attitude, remorseful, and willing to cooperate. The juvenile court also repeatedly emphasized to father in court that such statements, even if made in total frustration, were very concerning.

Finally, with respect to the concern that the minor will be in the home with her paternal grandmother who has a history of alcohol abuse, it was undisputed that grandmother had been sober for approximately seven months. Grandmother also was willing to cooperate with random alcohol testing.

Removal "is a last resort, to be considered only when the child would be in danger if allowed to reside with the parent. The law requires that a child remain in parental custody pending the resolution of dependency proceedings, despite the problems that led the court to take jurisdiction over the child, unless the court is clearly convinced that such a disposition would harm the child." (*In re Henry V.* (2004) 119 Cal.App.4th 522, 525.) Here, with father's cooperation and the measures the juvenile court put in place,

⁷ Although the minor and the Agency agreed that the minor needed intensive counseling, the Agency had not had a single session by the time of the disposition. Such services were, however, part of the family maintenance services plan.

including supervision by the court-appointed special advocate, social worker, personal counselors, and reflective parenting instructors, the evidence does not compel a finding that the minor is at risk in the home with family maintenance services.

Substantial evidence supports the juvenile court's orders.

DISPOSITION

The orders of the juvenile court are affirmed.

KRAUSE, J.

We concur:

MAURO, Acting P. J.

MURRAY, J.